

REMARKS

In the December 2, 2004 Office Action, claims 1, 2, 13-18 and 20 stand rejected in view of prior art, while claims 3, 4, 10 and 19 were indicated as containing allowable subject matter. Claims 5-9, 11 and 12 were withdrawn from consideration as directed to non-elected inventions. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the December 2, 2004 Office Action, none of the claims are being amended by the current Amendment as explained below. Applicants wish to thank the Examiner for the indication of allowable subject matter and the thorough examination of this application. However, reexamination and reconsideration of the pending claims are respectfully requested in view of the following comments.

Interview Summary

On February 17, 2005, the undersigned conducted a personal interview at the U.S. Patent Office with Examiner Vu, who is in charge of the above-identified patent application. Applicants wish to thank Examiner Vu for the opportunity to discuss the above-identified patent application during the Interview of February 17, 2005.

During the interview, the Applicants' representative presented the arguments that (1) the Pal et al. publication does not qualify as prior art against this application under 35 U.S.C. §102(e), and (2) the Pal et al. fails to anticipate the independent claim 1 since the Pal et al. publication does not include an ***auxiliary force adding device or means***. During the interview, Examiner Vu agreed that independent claim 1 is distinct and allowable over the

Pal et al. publication. However, Examiner Vu indicated that an updated search will need to be conducted.

Election of Species

On page 2 of the Office Action, Applicants' election without traverse was acknowledged. Thus, non-elected claims 5-9, 11 and 12 were withdrawn from further consideration. However, Applicants respectfully request that non-elected claims 5-9, 11 and 12 be rejoined in this application upon allowance of a generic or linking claim. Specifically, claims 5-9, 11 and 12 depend from claim 1, which was Applicants believe contain allowable subject matter.

Drawings

On page 1 of the Office Action, the Office Action indicates that the drawings filed on March 2, 2004 have been approved. Applicants wish to thank the Examiner for approval of the drawings.

Rejections - 35 U.S.C. § 102

On pages 2-3 of the Office Action, claims 1, 2, 13-18 and 20 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2003/00303309 (Pal et al. publication). In response, Applicants respectfully traverse this rejection for the following reasons, which were also presented during the interview.

First, the Pal et al. publication does not qualify as prior art against this application under 35 U.S.C. §102(e). The inventors (Chinmoy Pal and Izumi Kobayashi) of the Pal et al. publication are the same inventors as this present application. In other words, the Pal et al. publication and this present application have the *same inventive entity*. It is well settled that 35 U.S.C. §102(e) does not apply when there is the *same inventive entity*.

See MPEP § 706.02(f) which is partially reproduced below.

706.02(f) >Rejection Under 35 U.S.C. 102(e) [R-1]

This provision of 35 U.S.C. 102 is mostly utilized when the publication or issue date is too recent for the reference to be applied under 35 U.S.C. 102(a) or (b). *In order to apply a reference under 35 U.S.C. 102(e), the inventive entity of the application must be different than that of the reference.* Note that, where there are joint inventors, *only one inventor need be different for the inventive entities* to be different and a rejection under 35 U.S.C. 102(e) is applicable even if there are some inventors in common between the application and the reference.

(Emphasis Added)

Since there are no different inventors, 35 U.S.C. §102(e) does not apply. Thus, this rejection should be removed for this reason.

Moreover, independent claims 1 and 20 both recite a vehicle headrest apparatus with a swing/pushup force applying device or means, and an *auxiliary force adding device or means*. Clearly, this structure is *not* disclosed or suggested by the Pal et al. publication or any other prior art of record, whether taken singularly or in combination. It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicants respectfully submit that independent claims 1 and 20, as originally filed, are not anticipated by the prior art of record. Withdrawal of this rejection is respectfully requested.

Moreover, Applicants believe that the dependent 2-19 are also allowable over the prior art of record in that they depend from independent claim 1, and therefore are allowable for the reasons stated above. Also, the dependent claims 2-19 are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not anticipate the independent claim 1, neither does the prior art anticipate the dependent claims. Applicants respectfully request withdrawal of the rejection.

Allowable Subject Matter

On page 4 of the Office Action, claims 3, 4, 10 and 19 were indicated as containing allowable subject matter. Applicants wish to thank the Examiner for this indication of allowable subject matter and the thorough examination of this application. In response, Applicants have chose not to place these claims in independent form, since Applicants believe that independent claim 1 is allowable.

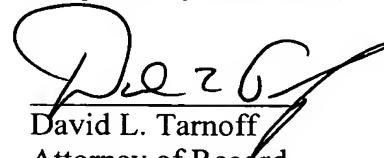
Prior Art Citation

In the Office Action, additional prior art references were made of record. Applicants believe that these references do not render the claimed invention obvious.

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In view of the foregoing amendment and comments, Applicants respectfully assert that claims 1-20 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,



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